IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2514 OF 2004

Mr. R.B. Raisoni. ...Petitioner.
Vs.
Bora Agro Foods & ors. ...Respondents.

Mr.R.S.Apte with M.J. Jamdar for the Petitioner.
Mr. R.D.Soni i/by Ram &Co. for the Respondent No.1.
Mr. A.S. Shitole, A.P.P. for the State.

CORAM : V.M.KANADE,J.
DATED : 4/5/2005

P.C.:

1. The matter was adjourned from time to time in order to explore the possibility of settlement. The petitioner has deposited an amount of Rs.10/- lacs. According to him the balance amount which is due and payable to the complainant is Rs.55/-lacs. However, there was no agreement between the parties regarding the manner in which the amount is to be paid. The learned counsel for the petitioner on merits has submitted that the complaint is filed by the power of attorney holder and in view of the provisions of Section 142 of the Negotiable Instruments Act the complaint itself is not maintainable. This submission however, cannot be accepted since defect if any in filing the complaint is a curable defect and that does not vitiate the entire trail.The submission made by the petitioner is regarding the service of statutory notice on the accused. This submission is a question of fact which can be only decided by the trial court. Thus, there is no merit in the submissions advanced by the learned counsel

for the petitioner. In the result, petition is rejected.

3. Further time is also granted to the petitioner to explore the possibility of settlement with the complainant and therefore, the trail court should place that matter for recording the plea of the accused on 1.7.2005. The respondent who is present in court undertakes to remain present in the said court on the next date i.e.1.7.2005 and no fresh notice shall be given to the accused. In the mean time, both the parties may try to find out solution to their dispute. Writ petition is disposed of with the above directions. The amount deposited by the petitioner in this court should be transferred to the Trial court.

(V.M.KANADE, J.)